

DRAFT

**TOWN OF SILVERTON, COLORADO
ORDINANCE NO. 2005-02**

**AN ORDINANCE TO AMEND SECTION
7-2-14 II, Avalanche Hazard Districts,
OF THE TOWN CODE
OF
SILVERTON, COLORADO**

WHEREAS, the Board of Trustees of the Town of Silverton, Colorado has determined that there is a need within the limits of the Town of Silverton to designate an avalanche hazard zoning district to identify those areas within the town limits where, after due investigation and study, the Board of Trustees finds that avalanche potential exists;

WHEREAS, the Board of Trustees has the authority pursuant to Section 29-20-104, C.R.S. to regulate development and activities in hazardous areas;

WHEREAS, the Town had a qualified professional, Arthur I. Mears, P.E., study avalanche paths entering town limits in 1998 to document the best information available on avalanches currently impacting the town; and

WHEREAS, avalanche incidents constitute a danger to the life, health, safety, and welfare of persons and properties situated within avalanche pathways;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF SILVERTON, COLORADO, that Section 7-2-14, II, Avalanche Hazard Districts, of the Code of the Town of Silverton, Colorado, is hereby amended to read:

"7-2-14. II. AVALANCHE HAZARD DISTRICT.

A. Purpose

An Avalanche Hazard Zoning District is established as a zoning overlay district for the following purposes:

1. To identify those areas within the Town of Silverton where, after due investigation and study, hazards to the safety of property and occupants exist due to potential avalanche activity impacting such areas;
2. To give notice to the public of those areas within the Town where such avalanche hazards to property and occupants have been found to potentially exist;
3. To mitigate, to the extent reasonably possible, the public's exposure to health, safety, and welfare hazards within avalanche hazard districts;
4. To allow for the use and development of properties situated within avalanche hazard districts only when such use and development complies with the requirements of this Section; and
5. To promote the general public health, safety and welfare.

B. Definitions

For the purposes of this Section, the following terms and phrases shall have the meanings assigned below:

1. "Afforestation" shall mean "the act or process of planting and establishing a dense timber forest stand on a tract of land."
2. "Avalanche" shall mean "a mass of snow, ice, and debris flowing and sliding across mountainous terrain." This definition shall include the "design avalanche" which is an avalanche of potential size and destructive force so as to have a one percent (1%) mathematical probability of occurring in any one year."
3. "Avalanche Path" shall mean "the terrain boundaries of known or potential avalanches to include the starting zone, the avalanche track, and the runout zone."
4. "Blue Zone" shall mean "a geographical land area impacted by snow avalanche activity producing a total avalanche impact pressure less than six hundred (600) pounds per square foot on a flat surface normal to the direction of avalanche flow and having a return interval in excess of thirty (30) years."
5. "Catching Structure" shall mean "an earthen berm or other physical structure built perpendicular to the direction of avalanche flow for the purpose of stopping the avalanche and, thereby, reducing the avalanche runout distance."
6. "Deflecting Structure" shall mean "an earthen berm or other physical structure built at an angle to the direction of avalanche flow for the purpose of directing the avalanche away from areas to be protected."
7. "Deforestation" shall mean "the act or process of cutting and removing a dense timber forest stand from a tract of land."
8. "Direct-Protection Structure" shall mean "detached or internal splitting wedges and walls; direct reinforcement of structures; and avalanche sheds for the purpose of protecting individual structures or areas by diverting avalanches around or over the object(s) or area(s) to be protected."
9. "Red Zone" shall mean "a geographical land area impacted by snow avalanche activity producing a total avalanche impact pressure in excess of six hundred (600) pounds per square foot on a flat surface normal to the direction of avalanche flow and/or having a return interval of less than thirty (30) years."
10. "Retarding Structure" shall mean "earthen mounds or other physical structure built in an avalanche path to create additional friction between the avalanche and the ground, spread the avalanche laterally, and reduce the effective flow height and runout distance of the avalanche."
11. "Snow Drift Fence" shall mean "wind fences installed in and adjacent to avalanche starting zones to reduce the amount of snow blowing into the starting zone or to distribute snow lower on the slope, thus reducing the frequency and size of avalanches."
12. "Snow Support Structure" shall mean "continuous or closely-spaced fences, vertical rakes, wire-rope nets, or other structures built in rows across avalanche slopes to anchor the snow in the starting zone and thereby preventing release."

C. Avalanche Hazard District Boundaries.

1. There is hereby designated an Avalanche Hazard Zoning District within the Town of Silverton. The Avalanche Hazard Zoning District shall be an "overlay zoning district" that designates those areas within the Town found subject to potential avalanche danger

identified in "Snow Avalanche Mapping Analysis, Silverton, Colorado, by Arthur I. Mears, P.E., Inc., dated February, 1998 together with supplemental avalanche mapping information submitted by Arthur I. Mears in conjunction with the referenced study.

2. The Avalanche Hazard District shall consist of two sub-zone designations as follows:
 - a. The "Red Zone" shall mean "land areas exposed to avalanches with a return period of less than thirty (30) years and/or avalanche impact pressures greater than 600 pounds per square foot on a flat, rigid surface situated perpendicular to the direction of avalanche flow."
 - b. The "Blue Zone" shall mean "land areas exposed to avalanches with a return period of in excess of thirty (30) years and avalanche impact pressures of less than 600 pounds per square foot on a flat, rigid surface situated perpendicular to the direction of avalanche flow."
 3. The Avalanche Hazard Zoning District shall include all of those areas within the Town so designated on the Town of Silverton Avalanche Hazard Zoning District Map adopted herewith and made a part hereof by reference. The Town of Silverton Board of Trustees may periodically adopt corrections or amendments to the Avalanche Hazard Zoning District Map by adoption of a resolution. The avalanche hazard areas designated on the Town of Silverton's Unified Hazard Overlay Map are hereby repealed and are made to be null and void with respect to the interpretation and implementation of this Section.
 4. Designation of properties as being within the Avalanche Hazard Zoning District shall subject those properties to additional requirements and restrictions upon the development and use of such properties as set forth in this section. All provisions set forth elsewhere in the zoning regulations and codes of the Town of Silverton shall continue to apply to properties within the Avalanche Hazard Zoning District, excepting that the additional requirements and restrictions of this section shall combine with all other code sections which might affect the use of properties within the district. If any of the regulations in this section differ from corresponding regulations specified for a district with which this Avalanche Hazard District has combined, the most restrictive regulations for the development or use of the property shall apply.
- D. Restrictions on Development in the Avalanche Hazard Zoning District
Any property located within the boundaries of the Avalanche Hazard Zoning District shall be subject to the restrictions on the development and use of properties as set forth herein. Anyone wishing to develop in any area lying within the boundaries of the Avalanche Hazard Zoning District must first obtain an approved Avalanche Hazard Development Permit, as set forth in Part E of this Section, before beginning any development or use activity.

1. Permitted Uses

An Avalanche Hazard Development Permit may be issued administratively by the Planning Department for the following types of land development and use:

- a. Natural areas, pasture land, open space, gardens, and similar types of land development and use.
- b. Hiking trails, biking trails, snowmobile trails, downhill ski trails, cross-country ski trails, and similar types of land development and use.
- c. Golf courses, tennis courts, athletic fields, recreational vehicle and campground unit spaces, parking lots, and similar uses, all of which involve no structures being built or situated within the Avalanche Hazard Zoning District from November 1st to May 1st

of any year.

d. Underground utilities.

2. Prohibited Uses

An Avalanche Hazard Development Permit shall be denied administratively by the Planning Department for the following types of land development and use:

a. Solid waste disposal sites, sewage treatment plants, or above ground facilities for the storage or disposal of hazardous, toxic, nuclear, flammable, or explosive materials, including above ground propane tanks.

b. Any use prohibited by the underlying zone regulations for the zone in which the proposed use is to be located.

c. Any multi-family building, including hotels, motels, apartment buildings, condominiums, townhouses, mobile home parks, and/or any subdivision that increases human occupancy of properties situated within the Avalanche Hazard Zoning District.

d. Any building or structure which is used, or intended for use, for public occupancy, including, but not limited to offices, factories, hospitals, schools, convention centers, jails, libraries, day care center, dormitories, group housing, or other similar type uses.

e. Any use which will result in year-round occupancy of the land by either livestock or domestic animals.

3. Uses Subject to Review

An Avalanche Hazard Development Permit may be approved, conditionally approved, or denied by the Town Board for the following types of land development and use:

a. Above ground utility facilities.

b. Underground facilities for the storage or disposal of hazardous, toxic, nuclear, flammable or explosive materials, including underground propane tanks.

c. Railroad tracks and switching facilities, roads, streets, parking lots, ski lift facilities, ice skating facilities, and other similar types of land development and use.

d. Avalanche control structures, including deflecting berms and structures, retarding mounds and structures, direct-protection structures, catching structures, snow drift fences, snow support structures, and similar facilities designed to inhibit, block, divert, split, or otherwise control the release, extent, or direction of avalanche runs.

e. Afforestation or deforestation.

f. Any seasonal development activity or land use not occurring between November 1st through May 1st of any year, including the placement of seasonal use structures which are either portable or permanently affixed to the land.

~~g. Alteration or removal of any natural landscape features affecting the release, flow velocity, or direction of avalanche runs.~~

h. Single-family residences.

i. Accessory buildings and structures, including fences, to any approved use within the district.

j. Vehicular parking facilities.

k. Any other use not expressly permitted or prohibited by the provisions of this Section or the provisions of any underlying zoning district's regulations.

l. Any proposed change or challenge to the boundaries of the Avalanche Hazard Zoning District or the boundaries of any sub-zone district.

E. Development Permit Required: Anyone wishing to develop in any area lying within the boundaries of the Avalanche Hazard Zoning District must first obtain an approved Avalanche Hazard Development Permit before beginning any development or use activities. The Building Inspector, or other authorized town official, shall issue a stop work order upon any development commenced, or structure constructed without such permit. Any development or structure commenced in violation of this ordinance may be required to be dismantled and removed, at the owner's sole expense, at the discretion of the Silverton Town Board of Trustees.

F. Information Required for Issuance of an Avalanche Hazard Development Permit

The following information shall be submitted in writing for review and approval for properties situated within a designated Avalanche Hazard District.

1. In order to provide reasonable notice to the public of the avalanche potential within all areas designated Avalanche Hazard District, the Application for an Avalanche Hazard Development Permit shall contain the following information:
 - a. A complete Use Subject to Review Application which meets all of the submittal requirements of Section 7-2-4 of the Town Code; and
 - b. A complete Release and Indemnification Agreement, properly executed by the owner of the subject real property.

2. Avalanche Hazard Development Permit in the Red Sub-Zone

If the real property to be developed and/or used lies within a designated Red Sub-Zone Avalanche Hazard Zoning District, the following information, in addition to the above information, shall be submitted for review pursuant to Section 7-2-4 of the Town Code:

a. Site Specific Avalanche Investigation

The applicant shall submit to the Town a two-part, site-specific engineering study report, wherein, Part 1 contains the complete study and report (as prepared by a recognized expert in the field of avalanche occurrence, force, and behavior) documenting avalanche impact pressures present at any and all proposed building and construction sites on the applicant's property; and, wherein, Part 2 contains complete construction plans and specifications for all proposed buildings and structures (as prepared by a qualified structural engineer licensed to practice in the State of Colorado), including the structural engineer's certification that the buildings and structures, if constructed in accordance with the submitted plans and specifications, will withstand the avalanche impact pressures as documented in Part 1. Such investigations, studies, and reports must be prepared at the applicant's expense. The investigations, studies, and reports must specifically answer the following:

- (1) Whether the site-specific conditions are such that the property can or cannot be developed for the specific structure(s) or proposed use(s) with or without on-site protective measures, and if protective measures are necessary, what those specific measures are, including site and construction plans for such protective measures;
- (2) Whether such on-site protective measures will increase the hazard to other properties, structures, roads, rights-of-way, easements, utilities, or construction located adjacent to or down slope from the applicant's property; and
- (3) Certification by the design engineer that such on-site protective measures, if constructed as designed, will withstand the documented avalanche impact

pressures and protect the subject properties without adversely impacting adjoining and/or down slope properties.

b. Requirement of Bond

At the discretion of the Town Board of Trustees, any applicant developing or using real property situated within a designated Red Sub-Zone Avalanche Hazard District may be required to post a bond, a letter of credit, or other guarantee to ensure that the requirements of this Section are complied with and the construction of any approved buildings, structures, or landscape modifications will be completed in strict accordance with approved plans and specifications.

G. Town Action on Development Permit Application:

1. An Avalanche Hazard Development Permit for properties situated within a designated Avalanche Hazard Zoning District will be denied if the Town Board of Trustees determines that the property owner does not attend the Use Subject to Review hearing on the owner's Application for an Avalanche Hazard Development Permit; the owner has not executed the required Release and Indemnification Agreement; or the Board finds that the application does not conform to the requirements of Section 7-2-4, this Section, or the underlying zoning district's regulations.
2. An Avalanche Hazard Development Permit for properties situated within a designated Red Sub-Zone Avalanche Hazard Zoning District will be denied if the Town Board of Trustees concludes that site cannot be developed for the proposed use because the danger posed by avalanche cannot be reduced or mitigated to a reasonable level. The Town Board of Trustees, considering information supplied by the Town's consulting engineer and/or the applicant's engineering report and other information made available to the Board during the review process, shall have the ultimate authority to determine whether such permits will be issued or denied. The Town Board, after staff review, public hearing, and due consideration of all relevant information made available to the Board during the review process shall render a decision to approve, conditionally approve, or deny the issuance of an Avalanche Hazard Development Permit. The burden of proof to establish that a site is safe, or that any hazard can be mitigated satisfactorily, shall be on the person or entity making application for the issuance of a development permit. The Board shall deny issuance of an Avalanche Hazard Development Permit for any application, in whole or in part, that fails to provide convincing and substantial evidence that the public health, safety, and welfare hazards associated with developing and occupying property in the Red Sub-Zone Avalanche Hazard Zoning District are maximally reduced to a reasonable and acceptable level, including specific findings by the Board, based upon the information available, that establishment of the proposed improvements and/or land uses will not increase the potential avalanche hazard or public health, safety, and welfare hazards associated with avalanches on adjoining properties, both within and without the Red Sub-Zone Avalanche Hazard Zoning District, especially down slope of the subject property. The Board shall also deny issuance of a permit to build within the Red Sub-Zone Avalanche Hazard Zoning District if the applicant and/or property owner has the opportunity to build outside the hazard district and chooses, without substantial hardship reason(s), to develop within the hazard district boundaries.

H. Existing Structures and Uses

Any building or structure which has been constructed within the Avalanche Hazard Zoning District prior to the effective date of this Section, shall be a non-conforming building or structure relative to this Section and may remain until it is moved, substantially damaged, or destroyed, excepting that the rental/lease of said building or property to another party shall conform to the General Notice Requirements of Part K of this Section. No non-conforming building in the Avalanche Hazard Zoning District may be altered such that the building dimensions are increased in anyway, that additional bedrooms are constructed, that human occupancy may potentially increase, or that the building's market value is increased by fifty percent (50%) or more. A non-conforming building and/or structure under this Section may be maintained and altered to construct approved avalanche protective measures regardless of how much the building's value increases. If a non-conforming building or structure under this Section is destroyed or damaged such that the cost of repairs will equal or exceed fifty percent (50%) of the structure's market value, the structure shall not be repaired or re-built without full compliance with the provisions of this Section and the provisions of any underlying zoning district classification. The market value shall be determined by a qualified assessor/appraiser, at the property owner's expense, designated by the Town Board, and such value shall be determined either before the improvement or repair is started, or before the damage occurred.

I. Warning and Disclaimer of Safety and Liability

1. Avalanches occur naturally, suddenly and unpredictably based upon steepness of slope and run out area, exposure, snow pack composition, wind, temperature, rate of snow fall and other little understood interacting factors. The Avalanche Hazard Zoning District designated in this Section is considered reasonable for regulatory purposes and is based upon and limited by the engineering and scientific methods of study. This Section does not represent or imply that areas outside the Avalanche Hazard Zoning District are free from avalanches or avalanche danger, particularly those properties lying in close proximity to a designated zone or sub-zone and especially those properties situated within any extension down slope of the designated avalanche path.
2. The fact that the Town of Silverton has not prohibited development, construction or use of real property within or in the vicinity of the Avalanche Hazard Zoning District does not constitute a representation, guarantee or warranty of any kind as to the safety of and construction, use, or occupancy thereof. The granting of any permit or approval for any structure or use, or the declaration or failure to declare the existence of an avalanche hazard shall not constitute a representation, guarantee or warranty of any kind or nature by the Town of Silverton, or any official or employee, of the practicality of safety of any construction, use or occupancy thereof, and shall create no liability upon or cause of action against such public body or its officials or employees for any injury, loss, or damage that may result thereby.
3. During periods of high avalanche danger, Town services may be suspended or otherwise not provided to properties and/or persons situated within the Avalanche Hazard Zoning District. The Town shall not accept responsibility for or guarantee that such services, including avalanche rescue efforts or other emergency services will be provided during periods of avalanche danger.

4. Persons who develop or occupy property within or in the vicinity of the Avalanche Hazard Zoning District do so by their own choice, decision and, solely, at their own risk.

J. Non-Liability.

1. The adoption or implementation of this Avalanche Hazard Zoning Section, provided for herein, shall not create any duty to any person, firm, corporation or other entity with regard to the enforcement or non-enforcement of this Section. No person, firm, corporation, or other entity shall have any civil liability remedy against the Town, or its officers, employees or agents, for any damage arising out of or in any way connected with the adoption, enforcement, or non-enforcement of this Section. Nothing in this Section shall be construed to create any liability, to waive any of the immunities, limitations on liability, or other provisions of the Governmental Immunity Act, C.R.S. 24-10-101 et. seq. or to waive any immunities or limitations on liability otherwise available to the Town, or its officers, employees or agents.
2. Persons who develop property within the Avalanche Hazard Zoning District or occupy property within said district during any portion of the months of November through April of any year must properly execute and deliver an original, notarized copy of a Release and Indemnification Agreement to the Town prior to developing or occupying said property. The Release and Indemnification Agreement shall read substantially as follows:

"RELEASE AND INDEMNIFICATION AGREEMENT"

In consideration for being permitted to build upon or occupy property situated within the designated Avalanche Hazard Zoning District, I, the undersigned, hereby acknowledge, represent and agree as follows:

- A. 1. I acknowledge that my development or occupancy of property lying within the Avalanche Hazard Zoning District, and any or all of the activities occurring in, on, over, or about said property, are or may be dangerous and do or may involve risks of injury, loss or damage. I further acknowledge that such risks may include but are not limited to bodily injury, personal injury, sickness, disease, death, and property loss or damage.
2. By signing this RELEASE AND INDEMNIFICATION AGREEMENT, I hereby expressly assume all such risks of injury, loss, or damage to me or to any third party arising out of or in any way related to my development or occupancy on properties situated within the Avalanche Hazard Zoning District, whether or not caused by the act, omission, negligence, or other fault of the Town, its officers, its employees, its agents, or by any other cause.
3. By signing this RELEASE AND INDEMNIFICATION AGREEMENT, I further hereby exempt, release, and discharge the Town, its officers, its employees, and its agents from any and all claims, demands, and actions for such injury, loss, or damage, arising out of or in any way related to my development or occupancy of property situated within the Avalanche Hazard Zoning District, whether or not caused by the act omission, negligence, or other fault of the Town, its officers, its employees, it agents, or by any other cause.

Signer must initial here

- B. I further agree to defend, indemnify and hold harmless the Town, its officers, employees, agents, insurers, and self insurance pool, from and against all liability, claims, and demands, including any third party claim asserted against the Town, its officers, employees, agents, insurers, or self insurance pool, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any way related to my development or occupancy of properties situated within the Avalanche Hazard Zoning District, whether or not caused by the act, omission, negligence or other fault of the Town, its officers, employees, or agents, or by any other cause.

Signer must initial here

- C. By signing this **RELEASE AND INDEMNIFICATION AGREEMENT**, I hereby acknowledge and agree that said **AGREEMENT** extends to all acts, omissions, negligence, or other fault of the Town, its officers, and/or its employees or agents, and that said **AGREEMENT** is intended to be as broad and inclusive as is permitted by the laws of the State of Colorado. If any portion hereof is held invalid, it is further agreed that the balance shall, notwithstanding, continue in full legal force and effect.

Signer must initial here

- D. I understand and acknowledge that the Town, its officers, its employees, and its agents are relying on, and do not waive or intend to waive by any provision of this **RELEASE AND INDEMNIFICATION AGREEMENT**, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, Colorado Revised Statutes, as from time to time amended, or otherwise available to the Town, its officers, employees, or agents.

Signer must initial here

- E. This **RELEASE AND INDEMNIFICATION AGREEMENT** shall be effective as of the date set forth below and shall be binding upon me, my successors, representatives, heirs, executors, assigns, transferees, and any other person(s) who may enter the premises upon or without my invitation.

Signer must initial here

Executed this _____ day of _____, 200__ by the person whose name and signature appear below:

Signature

Printed Name of Signer

Address of Signer

Lot(s): Block(s): Subdivision:

Legal Description of Property

NOTARY PUBLIC SIGNATURE AND SEAL"

K. General Notice Requirements.

1. All new subdivision plats which are situated wholly or partially within the Avalanche Hazard Zoning District and filed after the effective date of this section shall designate each lot, or portions thereof, situated within the Avalanche Hazard Zoning District with the applicable sub-zone designation by a stamp or writing in a manner providing reasonable notice to interested parties.
2. All plans submitted with a Building Permit application for property within an Avalanche Hazard Zoning District shall be stamped "Construction in Avalanche Hazard Zoning District" together with the applicable sub-zone designation.
3. Prior to issuance of any Building Permit for construction within the Avalanche Hazard Zoning District, the applicant shall sign a Release and Indemnification Agreement as specified in Part J.2 of this Section, and said Agreement shall be properly record in the office of the San Juan County Clerk, at the expense of the applicant, by the Town.
4. All persons who rent, lease, or sublet any structure or premises within the Avalanche Hazard Zoning District for any portion of the months of November, December, January, February, March, or April shall provide the Town with written notice, signed and notarized by the tenant, lessee, or sub-tenant that they have been informed that said property is located within the Avalanche Hazard District, and said tenant shall execute and file with the Town a Release and Indemnification Agreement as specified in Part J.2 of this Section. Written notice and proper execution of the Release and Indemnification Agreement to the Town must be accomplished prior to any occupancy thereof. Compliance with this Part K.4 shall be handled administratively by the Planning Department without the need for a Use Subject to Review Hearing or approval by the Town Board.
5. Each and every real estate agent, sales person and broker, and each and every private party owning property within said Avalanche Hazard Zoning District shall, upon first inquiry, provide the prospective purchaser, lessee, or tenant, prior to or in conjunction with viewing said real property, with written notice that said real property is located within the Avalanche Hazard Zoning District. Furthermore, said written notice shall state that the studies referred to in this code are available for public inspection at the office of the Silverton Town Clerk-Treasurer and that said studies should be reviewed prior to any party entering any agreement, contract or lease with regard thereto.
6. The Town shall post and maintain signs on public right-of-ways at the boundary of the avalanche hazard district in order to inform the traveling public that they are entering an avalanche hazard area. The owner of private roads and parking lots situated within an avalanche hazard district shall post and maintain signs at visible locations to inform persons using the facilities that they are entering an avalanche hazard area.

L. Severability

If any part or provision of this Section, or application thereof to any person or circumstance, is adjudged invalid or unconstitutional by a court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which said judgment shall have been rendered, and said judgment shall not affect or impair the validity of the remainder of this section or the application thereof to other persons or circumstances. The Town Board hereby declares that it would have enacted the remainder of this Section even without such part, provision, or application adjudged to be invalid or unconstitutional."

Upon adoption hereof, this ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

ADOPTED this ____ day of _____, 2005.

ATTEST:

TOWN OF SILVERTON, COLORADO

Tracy Boeyink
Clerk-Treasurer

James D. Huffman
Mayor